No. 02-1315

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GARY LOCKE, GOVERNOR OF WASHINGTON, *et al.*,
Petitioners,

v.

JOSHUA DAVEY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL JEWISH COMMISSION ON LAW AND PUBLIC AFFAIRS ("COLPA") AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*[1]

The National Jewish Commission on Law and Public Affairs ("COLPA") is an organization of volunteer lawyers

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[1] No person, organization or corporation other than the *amicus* and the organizations named herein have assisted in or contributed to the preparation of this brief. The parties have consented to the filing of this brief.

that advocates the position of the Orthodox Jewish community on legal issues affecting religious rights and liberties in the United States. COLPA has consistently supported the principle of fair and even-handed treatment for students who attend Jewish and other religious schools. Over the past 35 years, since *Board of Education* v. *Allen*, 392 U.S. 236 (1968), COLPA has filed *amicus* briefs in nearly all cases considered by this Court involving government assistance to students attending religious educational institutions and in many other cases involving the constitutional provisions regarding freedom of religion.[2]

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[2] *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Good News Club v. Milford Cent. School*, 533 U.S. 98 (2001); *Mitchell v. Helms*, 530 U.S. 793 (2000); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Agostini v. Felton*, 521 U.S. 203 (1997); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Lee v. Weisman*, 505 U.S. 577 (1992); *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989); *Bowen v. Kendrick*, 487 U.S. 589 (1988); *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987); *Local No. 93, Intern. Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986); *Ohio Civil Rights Com'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986); *School Dist. of City of Grand Rapids v. Ball*, 473 U.S. 373 (1985); *Aguilar v. Felton*, 473 U.S. 402 (1985); *Mueller v. Allen*, 463 U.S. 388 (1983); *Bob Jones University v. United States*, 461 U.S. 574 (1983); *Widmar v. Vincent*, 454 U.S. 263 (1981); *United Steelworkers of America, AFL-CIO-CLC v. Weber*, 443 U.S. 193 (1979); *Regents of University of California v. Bakke*, 438 U.S. 265 (1978); *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977); *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144 (1977); *Committee for Public Ed. and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Dewey v. Reynolds Metals Co.*, 402 U.S 689 (1971); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Tilton v. Richardson*, 403 U.S. 672 (1971); *Walz v. Tax Commission of City of New York*, 397 U.S. 664 (1970); *Board of Ed. of Central School Dist. No. 1 v. Allen*, 392 U.S. 236 (1968).

COLPA submits this *amicus* brief on behalf of, and is joined by, the following seven national Orthodox Jewish organizations:

- Agudas Harabonim of the United States and Canada is the oldest Orthodox rabbinical organization in the United States. Its membership includes leading scholars and sages, and it is involved with educational, social and legal issues significant to the Jewish community.

- Agudath Israel of America is the nation's largest grassroots Orthodox Jewish organization, with chapters in 36 states and over 50 cities throughout the United States. One of its functions is to serve as an advocate for the cause of Jewish schools and Jewish education.

- National Council of Young Israel is a coordinating body for more than 300 Orthodox synagogue branches in the United States and Israel. It is involved in matters of social and legal significance to the Orthodox Jewish community.

- The Rabbinical Alliance of America is an Orthodox Jewish rabbinical organization with more than 400 members. It has for many years been involved in a variety of religious, social and educational areas affecting Orthodox Jews.

• The Rabbinical Council of America is the largest Orthodox Jewish rabbinical organization in the world. Its membership exceeds one thousand rabbis, and it is deeply concerned with issues related to religious freedom.

• Torah Umesorah-The National Society for Hebrew Day Schools is the coordinating body for more than 600 Jewish day schools across the United States and Canada.

• The Union of Orthodox Jewish Congregations of America (the "U.O.J.C.A.") is the largest Orthodox Jewish synagogue organization in North America, representing nearly one thousand congregations. Through its Institute for Public Affairs, the U.O.J.C.A. represents the interests of its national constituency on public policy issues.

Each of these organizations subscribes to the view that American society is best served when religion is allowed to flourish, and that attempts to maintain an impregnable "wall of separation" between church and state — such as is embodied in State "Blaine Amendments" — results in government hostility to religion and discrimination against people of faith.

As observant Jews, we know all too well the dangers and the consequences of government-sanctioned hostility to religious practices. We are particularly concerned when that hostility is directed, as in the case now before this Court, at religious learning and study. For Orthodox Jews, intensive daily study of the Torah, the Talmud, the Code of Jewish Law, and other works that expound on these basic texts is an essential component of our religious observance. The centrality of Torah study is emphasized repeatedly in the Jewish religious tradition. Thousands of students pursue

Jewish religious tradition. Thousands of students pursue advanced religious Torah studies in post-secondary institutions of higher Jewish learning while receiving college-level educations that equip them for contemporary life as professionals or other wage-earners in modern society.

Students enrolled in such institutions should not be disadvantaged in comparison with their peers enrolled in non-sectarian schools. Yet State "Blaine Amendments," which originally passed during a wave of anti-Catholic xenophobia, may be used today to block government assistance to college students who also attend religious educational institutions.

We acknowledge that the Establishment Clause imposes limits on direct government financial aid to religious schools. But the Blaine Amendments go further if they are interpreted to deny aid to students who are studying secular subjects merely because, at the same time, they intensively study religion from a religious perspective at religious institutions. In the case before the Court, for example, Washington State entitles qualified students pursuing all forms of study to receive Promise Scholarships. Only students who take their religion seriously enough to devote a significant portion of their college education to the pursuit of religious study in a religious setting are disqualified.

Disqualifying students seeking to pursue religious studies – no matter what else they may be studying simultaneously – constitutes a degree of hostility to religion that is unconstitutional under authoritative rulings of this Court. The Court should affirm the decision below and invalidate discrimination against religious observance and religious study of the kind demonstrated by Washington's statute and practice.

ARGUMENT

INTRODUCTION

This case concerns the constitutionality, under the Free Exercise Clause, of a state law that prohibits a State from providing financial assistance to an otherwise qualified college student because that student "is pursuing a degree in theology." Wash. Rev. Code § 28B.10.814. The Washington State authorities have interpreted this statute to apply only to students who study theology "from a religious perspective."

This disqualification is unconstitutional because it is "restrictive of religious practice" and discriminates against conduct "because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 532, 546 (1993). A college student who takes his religious beliefs seriously enough that he pursues "a degree in theology" at a school that is accredited by the State suffers discrimination on account of his religious observance if the State refuses to provide to him the same financial assistance that it provides to other objectively qualified students who pursue a degree in history, languages, sciences, or mathematics.

The discrimination is particularly severe as it applies to religiously observant Jewish college students. Our religious beliefs command us to study religious teachings – *i.e.,* to pursue the study of theology "from a religious perspective" – in addition to whatever secular studies we may pursue in order to earn a livelihood. If the challenged Washington statute is taken literally, Jewish college students who spend a significant portion of their average day studying the Talmud and Jewish Codes – as they are obligated to do by their religious convictions – become ineligible, on account of this dedication to religious observance, for the

governmental scholarship assistance that is provided to contemporaries who are no more qualified, but who lack equal dedication to religious practice. The existence of this rule also inhibits Jewish college students who believe that their religious obligations include intensive study of the Torah, the Talmud, and the Codes of Jewish Law. If intense religious study results in ineligibility for a state-funded scholarship grant, students will be deterred from engaging in study required by religious convictions.

The effect of the Washington State statute that disqualifies any student who is "pursuing a degree in theology" from receiving a Promise Scholarship is equivalent, in a constitutional sense, to a disqualification of any student who wears a yarmulke, or any student who eats only food prescribed by religious dietary laws, or any student who observes Saturdays as the Sabbath. It removes a student who is otherwise fully qualified and eligible for personal financial assistance from the roster of eligible students exclusively because he or she takes his or her religion seriously. That form of discrimination violates the Free Exercise Clause of the United States Constitution and cannot be justified by a purported policy of Washington State to erect a higher "Wall of Separation" between Church and State than is provided by the Establishment Clause.

I

THE WASHINGTON STATUTE IS A DISQUALIFICATION LAW, NOT A LIMITATION ON EXPENDITURE OF STATE FUNDS

Notwithstanding assertions repeatedly made in the Petitioners' Brief and in the briefs of *amici* supporting the petitioners, the statute at issue in this case is not truly a

limitation on the disbursement of state funds for religious instruction. Section 28B.10.814 of the Washington Revised Code is not cast as a prohibition against expending funds for a defined purpose. It disallows state aid "to any student" pursuing the defined course of study. Washington State's Promise Scholarship does not pay any teacher, whether he be a teacher of religion or any other subject. Nor does it purchase any book or instructional aid.

The Promise Scholarship is an annual grant to graduates of Washington high schools who have outstanding academic records, who have achieved high scores on standardized objective pre-college examinations, and whose families have economic need for financial assistance during their dependents' college years. It is a grant made *to a student*, not a purchase of services or goods.

Students who qualify under objective criteria and choose to attend public or nationally accredited colleges located in the State of Washington receive, through their colleges, one or two *personal* annual state-funded payments of $1125 to $1542 that the eligible students may use as they see fit. The funds may be used for a student's room or board, for transportation, or for any other academically related purpose. A student may also, if he or she chooses, apply the funds to tuition, but the choice is entirely up to the student.

Washington State law prescribes only two additional qualifications: (1) The student must be enrolled in college at least half-time. (2) The student may not be "pursuing a degree in theology."

At issue in this case is the second of these statutory criteria. In the context of the Promise Scholarship Program, it is plain that the "pursuing a degree in theology" provision

is simply a disqualification of certain otherwise qualified students such as the respondent in this case.

It makes no difference under the "theology" disqualification how many classes other than theology classes are being taken by the qualified student. Nor does it make any difference if the otherwise qualified student is "pursuing" degrees in other subjects in addition to theology – as the respondent in this case was actually doing. And the State of Washington does not care how the student chooses to spend the grant given him or her by the State. The student becomes ineligible for the grant simply because he or she is "pursuing a degree in theology."

II

THE INTENSIVE STUDY OF RELIGIOUS TEXTS FROM A RELIGIOUS PERSPECTIVE IS A CENTRAL TENET OF JEWISH RELIGIOUS OBSERVANCE

By disqualifying a college student from a state-financed benefit because he "is pursuing a degree in theology" from a religious perspective, the State of Washington effectively discriminates against Jewish college students who, as part of their religious observance, must study religious texts intensively. By religious tradition, such concentrated study should ideally result in the student's achievement of a level of expertise that would be the equivalent of what is required to qualify as a teacher and rabbi. Jewish college students who take their religious duties seriously often combine sustained Torah study which culminates with rabbinic ordination or its equivalent with a secular college program. If the religious education renders

them ineligible for a state-financed personal scholarship program during their college years, these students are being singled out for discriminatory treatment merely because of their religious observance.

The *Encyclopedia Judaica* begins its description of the Jewish religious duty to study religious texts from a religious perspective: "The study of the Torah (*talmud Torah*) as a supreme religious duty is one of the most typical and far-reaching ideas of rabbinic Judaism. Talmudic literature is full of references to the *mitzvah* [commandment] of Torah study, especially of the difficult halakhic portions which require the fullest application." 15 *Encyclopedia Judaica*, "Study" 453 (1971). The historical aspect of this religious duty is described as follows: "The ideal of Torah study as a lifelong pursuit incumbent upon all Jews found ample concretization in the course of Jewish history." *Id.* at 458. "Dedicated students, 'toiling in the Torah,' were found to number in the thousands in the great Palestinian and Babylonian academies during the first five centuries of the present era." *Id.* at 453.

Maimonides, the great twelfth century Codifier of Jewish Law, summarized the religious obligation as follows in Chapter 1 of "The Laws Concerning the Study of the Torah" in his classic work *Mishneh Torah,* Book One:

> (8) Every Israelite is under an obligation to study Torah, whether he is poor or rich, in sound health or ailing, in the vigor of youth or very old and feeble. Even a man so poor that he is maintained by charity or goes begging from door to door, as also a man with a wife and children to support, is under the obligation to set aside a definite period during the day and at night for the study of the Torah, as it is said, "But you shall meditate therein day and night" (Joshua 1:8).

* * * * *

> (10) Until what period in life ought one to study Torah? Until the day of one's death, as it is said, "And lest they [the precepts] depart from your heart all the days of your life" (Deuteronomy 4:9). Whenever one ceases to study, one forgets.

Rabbi Joseph Caro, in his sixteenth century monumental codification of Jewish Law called the *Shulchan Aruch,* ruled that every Jewish male is obligated to study the Torah every day of his life. *Yoreh Deah* 246:1. Contemporary scholars have emphasized this religious obligation of the observant Jew in the modern world. For example, Dr. Norman Lamm, Chancellor and recently retired President of Yeshiva University, said:

> The study of Torah has always been accorded high significance in Judaism. The clearest formulation of this principle is given in the Mishnah: The study of Torah is equal to all the other precepts. Even more than merely "an integral part of Jewish piety," *talmud Torah* was considered an act performed by God Himself: "The Holy One, blessed be He, the King of Kings of Kings . . . one-third of the day He studies Bible and Mishnah.". . . . [T]he virtue of the study of Torah, as such, is incontestable. All of Judaism is dedicated to the importance and practice of *talmud Torah.* It raises man to the level of a priest. . . . . The reward of the righteous in the world-to-come will be further study of Torah. The study of

> Torah enhances brotherliness and is a source of consolation to those on the brink of despair. "What joy can a man find in the world? Solely in the words of the Torah." All of the *baraita Kinyan Torah*, appended to Mishnah *Avot* as the sixth chapter, is a paean of praise for the study of Torah.

Norman Lamm, Torah Lishmah: Torah for Torah's Sake (Ktav 1989), p. 102 (footnotes omitted).

A recent work by an internationally renowned Israeli rabbinic figure (who also received a Doctorate in English Literature from Harvard University) explained the modern Jew's religious duty to study religious texts intensively from a religious perspective as follows:

> *[T]almud Torah* is not merely a preliminary to observance. It is itself a *mitzvah* – indeed, one of the most basic. Torah study, ideally conceived as both an intellectual exercise and a religious experience, is imposed by the Halakhah as a universal daily obligation. Insisting that God must be served with the head as well as with the hands and the heart, [Judaism] sees intellection as an integral aspect of the religious life of every individual. It has never seen religious study as the private preserve of an ecclesiastical hierarchy or of a privileged intellectual elite. On the contrary, it posits *talmud Torah* as the duty and destiny of all. It realizes that great success in the exercise of reason as part of man's search for God cannot come to all, or even to many, but it considers this no reason for abandoning the attempt. It is precisely for the effort, the

> *process* of the *recherche*, that the Halakhah presses most insistently. Of *yedi'at Ha-Torah*, the knowledge of Torah, [rabbinic consensus] has relatively little to say; but of *talmud Torah*, they can never say enough.

Aharon Lichtenstein, Leaves of Faith: The World of Jewish Learning (Ktav 2003), pp. 90-91.

This religious obligation is not the province of rabbis and academicians alone; it is the duty of every Jew. Rabbi Meir, a leading figure of the first century Tannaitic period, is quoted in *The Ethics of the Fathers* 4:12: "Rabbi Meir said: 'Reduce your business activities and engage in Torah study. . . . If you neglect the study of Torah, you will have many excuses to neglect it. But if you labor in the Torah, you will be given much reward.'" And Rabbi Judah ben Ilai is quoted in the Talmud (*Berachot* 35b) as contrasting "earlier generations" which made the study of Torah their main concern and their livelihoods secondary with "later generations" which gave primary importance to secular concerns and secondary status to Torah study. The former, he said, prospered in both fields, whereas the latter succeeded in neither.

The result of these teachings is that many Jewish college students throughout the United States combine their secular college educations with intensive study of religious texts from a religious perspective. M. Herbert Danzger, Returning to Tradition: The Contemporary Revival of Orthodox Judaism (Yale University Press 1989), pp. 149-151, 278. Indeed, the principal author of this brief – who has argued 27 cases in this Court and written many *amicus* briefs in cases heard by the Court – received an undergraduate college education while studying six hours a day in the rabbinic school of Yeshiva University. During his college

years (1953-1957), undersigned counsel was the beneficiary of a New York State Regents Scholarship, which assisted substantially in financing counsel's undergraduate secular education. That scholarship was awarded on the basis of performance in an objective examination administered statewide. Had New York State law barred anyone pursuing a "degree in theology" from a religious perspective from receiving a New York State Regents Scholarship, the author of this brief would probably have been disqualified from receiving such a Regents Scholarship for his secular studies and might never have qualified for an undergraduate degree, proceeded to the Harvard Law School, obtained a clerkship with a Justice of this Court, and served as an Assistant to Solicitors General Archibald Cox and Thurgood Marshall. What the future holds in store for the respondent in this case is not yet known,[3] but disqualification from a financial benefit that the State of Washington is prepared to give him based on objective academic performance should not result from his conscientious adherence to religious convictions.

III

THE DISQUALIFICATION OF STUDENTS STUDYING THEOLOGY FROM A RELIGIOUS PERSPECTIVE IS NOT NEUTRAL AND IT SUPPRESSES RELIGIOUS OBSERVANCE

The challenged Washington statute fails the "neutrality inquiry" and the "general applicability" test of *Church of the Lukumi Babalu Aye v. City of Hialeah,* 508

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[3] A recent article discussing this case reports that the respondent has "decided to attend Harvard Law School upon graduating from Northwest." Ryan, "The Neutrality Principle," 3 Education Next, No. 4, p. 29 (Fall 2003).

U.S. 520, 542 (1993), in at least two major respects. *First,* it disqualifies college students who are pursuing a degree in theology, as contrasted with students who are pursuing degrees in philosophy, history, mathematics, or psychology. Since the Promise Scholarship does not pay directly for a student's academic courses but may be used by the student for any academic purpose whatever, there is no legitimate policy justification for singling out "theology," as opposed to "philosophy" or "psychology," as a forbidden degree major. Students who are majoring in theology should be no less entitled to receive personal grants to be used for room, board, or transportation than students who are studying languages or literature. By singling out and disqualifying students who are pursuing degrees in theology, the Washington statute manifests a constitutionally impermissible hostility to religion.

Second, the exception for theology majors studying that subject "from a religious perspective" makes the challenged Washington law "selective" rather than a law "of general applicability." By declaring ineligible anyone who studies theology from a religious perspective, the law "imposes burdens only on conduct motivated by religious belief." 508 U.S. at 543. Whether theology is taught from a "secular" perspective or from a "religious" perspective would make no difference if the law were truly a statute of "general applicability." Disqualifying students because of the "religious perspective" of the instruction is a means of deterring "conduct motivated by religious belief." That is precisely what this Court's *Lukumi Babalu Aye* decision condemns. 508 U.S. at 545. It is also prohibited by this Court's earlier decision in *McDaniel v. Paty,* 435 U.S. 618 (1978), because, in the language of Justice Brennan's concurring opinion in that case, the law "imposes a unique disability upon those who exhibit a defined level of intensity

of involvement in protected religious activity." 435 U.S. at 632.

There is another constitutionally impermissible consequence of the challenged Washington law. It has the serious effect of inhibiting and deterring religious observance. A college student who has won a Promise Scholarship and whose family cannot easily afford his or her secular college education is encouraged by this law to reduce his or her contemporaneous study of religious texts and other forms of "theology" lest the quantity of such study result in disqualification from the program. Hence there is a direct correlation between the statute and the student's adherence to religious observance. A Jewish college student who might otherwise wish to pursue the kind of intensive Torah study that could ultimately lead to rabbinic ordination – a positive commandment under Jewish Law – would hesitate and possibly avoid concentrated religious study in order not to jeopardize the financial assistance he has been awarded.

IV

NEITHER WASHINGTON'S "BLAINE AMENDMENT" NOR A "PLAY IN THE JOINTS" THEORY SUSTAINS THE RELIGIOUSLY DISCRIMINATORY STATUTE

The State seeks to rescue its statute despite its patently discriminatory purpose and effect by invoking the provision of Washington's constitution that prohibits the appropriation or application of any "public money or property . . . to any religious worship, exercise or instruction." Washington Constitution, art. I, section 11. This provision does not appear to be literally applicable to the

Promise Scholarship because, as we have noted, scholarship funds do not pay any religious teacher or purchase any religious book. Assuming, *arguendo*, however that the "Blaine Amendment" would prohibit the grant of a Promise Scholarship to the respondent because he is pursuing a degree in theology from a religious perspective, that state constitutional provision could not trump the command of the Free Exercise Clause.

Similar claims that granting equality to religious observance or speech might violate a state policy of non-establishment of religion have been rejected in cases involving access to governmentally owned property. See *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). This Court made it clear in the *Good News Club* case that a restriction that singles out religious expression can be justified by the State only if it is actually necessary to avoid violating the Establishment Clause. 533 U.S. at 112-120. If there is no actual violation of the Establishment Clause, the mere perception that a non-establishment principle might be violated is insufficient to sustain a discriminatory denial of religious expression. In the present case, the petitioners concede that permitting the respondent to qualify for a Promise Scholarship would not violate the Establishment Clause of the First Amendment to the United States Constitution. Brief for the Petitioners, pp. 4, 43. It follows, therefore, that the Blaine Amendment – which, as interpreted here, goes well beyond the Establishment Clause – cannot justify the disqualification of the respondent.

Nor does the "play in the joints" concept urged forcefully by some *amici* – including the American Jewish Congress – save Washington's discriminatory policy. It is ironic that the very same organization that adamantly

opposed the concept that local governments should be entitled to "play in the joints" that would permit greater leeway under the Religion Clauses in the 1970's and 1980's – when a majority of this Court was invalidating different forms of governmental financial assistance for education in religious schools[4] – is now claiming that federalism grants discretion to States to forbid student aid protected by the federal Constitution. In any event, "play in the joints" is not a constitutional license to harm devout religious believers such as respondent and to deny to him, in violation of the Free Exercise Clause, the same benefits that he would have if he were not motivated by conscientious convictions.

The authorization Washington is seeking – to permit its local legislature to experiment with the respondent's constitutionally protected rights – is comparable to the leeway that the State of Texas was requesting in *Lawrence v. Texas*, 123 S. Ct. 2472 (2003), in order to enforce local morals and standards of conduct. This Court held that the United States Constitution did not permit Texas to restrict sexual freedom in this manner. The Court said (123 S. Ct. at 2475):

> Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves liberty of the person both in its spatial and more transcendent dimensions.

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[4] *E.g.*, *Committee for Public Ed. and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973); *Aguilar v. Felton*, 473 U.S. 402 (1985); *School Dist. of City of Grand Rapids v. Ball*, 473 U.S. 373 (1985).

The constitutional right of the respondent in this case to pursue a college education consistently with his religious convictions without forfeiting the financial assistance that the State of Washington has awarded to him is surely part of the "autonomy of self that includes freedom of thought, belief, [and] expression." The "transcendent dimensions" of the liberty to observe the doctrines of one's faith are entitled to no less respect than the equivalent dimensions of the "certain intimate conduct" at issue in *Lawrence*.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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